

## **LICENSED INSURANCE AGENTS AND “ALTERNATIVE INVESTMENT” PRODUCTS**

A variety of marketing firms are seeking insurance agents to sell products that the firms describe as attractive alternatives to standard insurance or investment vehicles. The marketing firms are approaching insurance agents because the agents have extensive established relationships with potential investors who trust them. The alternative financial products the firms promote include promissory notes, ATM or other electronic machine investment programs, pay telephone programs, viatical or life settlement contracts, charitable gift annuities, brokered certificates of deposit, oil and gas programs, factoring programs, and investments in European prime bank notes. The marketing firms entice insurance agents to sell these products by assuring the agents that the products are good for their clients, and that the higher-than-average commissions are good for the agents.

The Securities Division has found that the sale of these products by insurance agents presents a number of problems for the investors and for the insurance agents. Too frequently, the products have not been through a registration process and the products or the promoters are not legitimate. The insurance agents incur liability under the Securities Act and the investors lose their money.

Unless the securities or the transactions are exempt, securities laws require registration of products falling within the definition of a “security” with the Corporation Commission before the products are offered or sold within or from Arizona. All of the above products have been found to meet the definition of a “security” and must be registered or be sold in a transaction that is structured to qualify for an exemption from registration in Arizona. Anyone offering or selling these products must be registered as a securities salesman or qualify for an exemption. Even in the case of securities transactions that may be exempt from registration, the salesperson may still need to be registered as a securities salesman to offer or sell them.

While the registration of products and salesmen does not guarantee the legitimacy of an investment product or the honesty of a salesman, the registration requirements subject the securities offering to scrutiny by auditors, attorneys, and regulators. This scrutiny enhances the probability that an investment is legitimate. Check with the Securities Division to see if the product and salesman are registered.

The securities laws impose high standards on promoters and salesmen of securities transactions because the laws are intended to protect investors. The burden of due diligence rests with the issuer, promoter, and selling

agents, not the buyer. Unfortunately, in many instances, the insurance agent does not sufficiently verify the information the agent has received from the marketing firm. Sometimes the insurance agent is also an investor in the product—and the agent and the agent's clients become victims of fraudulent schemes.

Insurance agents and investors should not rely on the information that promoters or marketing firms give about products. In many cases investigated by this office, assurances that the products are not securities or that the products and sellers are exempt from registration have been found to be untrue. This includes cases where the issuers purportedly had a legal opinion the product was not a security or where the product was purportedly guaranteed or insured. Insurance agents should do their own due diligence. Potential investors should ask questions to verify that the agents have done so or conduct their own research and discuss the proposed investment with another trusted financial professional.

Due diligence does not need to be extensive with respect to investments in European prime bank notes or similarly named products—such schemes are fraudulent. The Commission has found that the products are not legitimate financial instruments and, in fact, do not exist.

Over the past several years, the Securities Division has filed numerous actions against insurance agents who have sold unregistered investment products or who have sold securities without being registered to do so. Since 2002, the Commission has entered orders against 24 insurance agents who have sold in excess of \$73,290,000 of such products; sales resulting in losses to more than 1770 investors.

Investigating prior to investing or promoting a product is the best way to avoid fraudulent investments. For additional information on how to investigate securities offerings, visit the investor education page of our web site or contact the Securities Division at **602-542-4242** or toll free at **1-866-VERIFY-9**.

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